

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THROUGHPUTER, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

No. 2:22-cv-00492-BJR

JOINT MOTION FOR AN EXTENSION
OF TIME FOR THROUGHPUTER, INC.
TO RESPOND TO MICROSOFT
CORPORATION'S PARTIAL MOTION
TO DISMISS

Plaintiff ThroughPuter, Inc. ("Plaintiff") and Defendant Microsoft Corporation ("Defendant") hereby jointly move the Court to extend the time for Plaintiff to respond to Defendant's partial motion to dismiss as follows and for the following good cause:

On April 13, 2022, Plaintiff filed its Complaint for Patent Infringement against Defendant. Dkt. 1. On April 18, 2022, Plaintiff filed its Notice of Related Cases, notifying the Court that the present case is related to *ThroughPuter, Inc. v. Microsoft Corporation*, Case No. 2:22-cv-00344-BJR. On May 10, 2022, Defendant filed a Partial Motion to Dismiss for Failure to State a Claim of Willful Infringement and Indirect Infringement (the "Motion to Dismiss"). Dkt. 13. At present, Plaintiff's response to Defendant's Motion to Dismiss is due on or before May 31, 2022.

1 On May 11, 2022, the Court in *ThroughPuter, Inc. v. Microsoft Corporation*, Case No.
2 2:22-cv-00344-BJR directed the parties to submit a Joint Status Report addressing three issues,
3 including “(1) Whether either party objects to the Court deferring consideration of Defendant’s
4 partial motion to dismiss pending the Court’s ruling on Defendant’s motion to stay;” and “(2)
5 Whether this case should be consolidated with Plaintiff’s recently filed case *ThroughPuter, Inc. v.*
6 *Microsoft Corp.*, No. 2:22-cv-492-BJR.” Dkt. 86. The parties submitted their Joint Status Report
7 on May 20, 2022. Dkt. 87. Therein, the parties informed the Court that they agree that the two
8 cases should be consolidated. *Id.* at 1. Additionally, the parties informed the Court that Defendant
9 filed a partial motion to dismiss in No. 2:22-cv-492 raising the same issues as its partial motion to
10 dismiss in No. 2:22-cv-344. *Id.* Importantly, the parties stated that they have “reached agreement
11 on a way to resolve [Defendant’s] two partial motions to dismiss through amendment of
12 [Plaintiff’s] complaint.” *Id.* at 2.

13 Specifically, as explained in the Joint Status Report (No. 2:22-cv-344, Dkt. 87), Plaintiff
14 has agreed to file a single amended pleading in the consolidated cases which omits its claims for
15 indirect infringement without prejudice to Plaintiff’s ability to seek leave to amend its complaint
16 pending further discovery and consistent with the Court’s Scheduling Order. Additionally,
17 Plaintiff has agreed to limit its claims of willful infringement to the time of filing of both
18 complaints in the related cases with respect to nine of the eleven asserted patents, again subject to
19 Plaintiff’s ability to seek leave to amend. Defendant did not challenge Plaintiff’s pleading of
20 claims for willful infringement of the other two asserted patents (U.S. Patent Nos. 9,632,833 and
21 9,424,090). *Id.* at 2. Indirect infringement and willful infringement were the only subjects of
22 Defendant’s partial motions to dismiss in both cases and, through the agreed upon approach,
23 Defendant’s partial motions to dismiss will be mooted.

1 Separately, the Court currently has pending in No. 2:22-cv-344 a Motion to Stay Pending
2 *Inter Partes* Review (“Motion to Stay”) filed by Defendant. *See* Dkt. 82. Plaintiff filed its
3 Opposition on May 9, 2022 (Dkt. 83) and Defendant filed its Reply on May 23, 2022 (Dkt. 88).
4 In its Motion to Stay, Defendant stated that “because there is substantial overlap in parties and
5 issues, [No. 2:22-cv-492] should be consolidated with [No. 2:22-cv-344] and also stayed.” No.
6 2:22-cv-344, Dkt 82 at 4.

7 In view of the agreement of the parties about Plaintiff’s filing of a consolidated amended
8 complaint, and further in view of Defendant’s pending Motion to Stay, the parties submit that good
9 cause exists for the Court to extend the time for Plaintiff to respond to Defendant’s Motion to
10 Dismiss in No. 2:22-cv-492 until seven (7) calendar days after it rules on Defendant’s Motion to
11 Stay. The parties believe that extending the time for Plaintiff to respond to Defendant’s Motion to
12 Dismiss will conserve their and the Court’s time and resources, as Plaintiff’s amended pleading
13 will obviate the issues raised in Defendant’s Motion to Dismiss. At bottom, briefing and possibly
14 deciding a motion that will be rendered moot while Defendant’s Motion to Stay is pending does
15 not benefit anyone. Instead, the Court and the parties would benefit from a ruling on the Motion
16 to Stay, after which they will know how and when the cases are (or the consolidated case is)
17 proceeding.

18 **CERTIFICATION OF CONFERRAL**

19 Counsel for the parties have met and conferred on the extension of time proposed herein
20 and the parties have agreed to jointly file this motion.

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1 DATED this 24th day of May, 2022.

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*Counsel for Defendant Microsoft
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IT IS SO ORDERED



Honorable Barbara J. Rothstein
United States District Judge